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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

IMELDA CONTRERAS DE AVILA, ET AL.,
Petitioners.

VS.

WILLIAM FRENCH SMITH, ET AL.,
Respondents.

[redacted]Brief Amicus Curiae in Support of Petitioners

PETER A. SCHEY*
TIMOTHY S. BARKER
CARLOS HOLGUIN
National Center for Immigrants' Rights
1550 West Eighth Street
Los Angeles, California 90017
213/487-2531

VILMA S. MARTINEZ
MORRIS J. BALLER
JOHN E. HUERTA
Mexican-American Legal Defense & Educational Fund
1636 West Eighth Street, Suite 319
Los Angeles, California 90017
213/383-6952

AMIT PANDYA
National Center for Immigrants' Rights
1511 K Street N.W., Suite 319
Washington, D.C. 20005
202/737-1444

JOSE MEDINA
ISAIS TORRES
La Raza Legal Alliance
2990 Richmond, Suite 205
Houston, Texas 77908
713/524-4801

Attorneys for Amicus Curiae

**Attorney of Record for Amicus Curiae*

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The League of United Latin American Citizens (LULAC), the Western States Region of the International Ladies' Garment Workers Union (ILGWU), the Farm Labor Organizing Committee (FLOC), the Texas Farm Workers Union (TFW), the International Brotherhood of General Workers, Local 301 (IBGW), the Social Justice Commission (Archdiocese of San Francisco) (SJC), and the National Center for Immigrants' Rights (NCIR), pursuant to Rule 36, Rules of the Supreme Court of the United States, hereby respectfully move for leave to file the attached brief *amicus curiae* in this case. The consent of the attorneys for the petitioners and respondents has been obtained.

The League of United Latin American Citizens is the oldest and largest Hispanic community-based, not-for-profit organization in the country. With chapters throughout the country, LULAC engages in advocacy work to protect the rights of non-citizens residing in the United States. The *amici* unions (ILGWU, FLOC, TFW, IBGW) organize workers without discrimination based upon alienage or immigration status, and work to protect and promote the rights of those workers. The SJC provides direct representation to indigent persons involved in immigration proceedings and has clients who will be immediately affected by the disposition of this case. *Amici* NCIR is a non-profit organization serving as a resource to community-based associations involved

in protecting the rights of immigrants and providing direct representation to indigent persons in immigration matters.

The interest of the *amici* arises primarily because they all have members affected by the outcome of this case. *Amici* can analyze and argue the importance of this case -- that is, the actual practical effect of the challenged decision and its consequences for other litigants in other situations.

The disputed decision, if implemented, will immediately result in the initiation of deportation proceedings against approximately 15,000 to 20,000 *documentable* persons (i.e. persons who could regularize their status under existing laws but for visa backlogs) accompanied by family separations which, given current Immigration Service backlogs, would last for many years. The regional and national scope of the work of the *amici* provides them with an ability to fully explain the importance of this case on the rights of class members in a manner not necessarily shared by the petitioners. *Amicus curiae* can further provide this Court with additional arguments concerning the legislative history of relevant provisions of the Immigration and Nationality Act.

Respectfully submitted,

PETER A. SCHEY
TIMOTHY S. BARKER
CARLOS HOLGUIN
National Center for
Immigrants' Rights
1550 West Eighth Street
Los Angeles, CA 90017
(213) 487-2531

VILMA S. MARTINEZ
MORRIS J. BALLER
JOHN E. HUERTA
Mexican-American legal
Defense & Educational Fund
1636 West Eighth Street
Suite 319
Los Angeles, CA 90017
(213) 383-6952

AMIT PANDYA
National Center for
Immigrants' Rights
1511 K Street N.W., Suite 931
Washington, D.C. 20005
(202) 737-1444

JOSE MEDINA
ISAIAS TORRES
La Raza Legal Alliance
2990 Richmond, Suite 205
Houston, Texas 77908
(713) 524-4801

PETER A. SCHEY
Attorney of Record
for *Amicus Curiae*
DATE: July 23, 1981

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CARLOS HOLGUIN
National Center for
Immigrants' Rights
1550 West Eighth Street
Los Angeles, California 90017
213/487-2531

VILMA S. MARTINEZ
MORRIS J. BALLER
JOHN E. HUERTA
Mexican-American Legal Defense
& Educational Fund
1636 West Eighth Street,
Suite 319
Los Angeles, California 90017
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National Center for
Immigrants' Rights
1511 K Street N.W., Suite 319
Washington, D.C. 20005
202/737-1444

JOSE MEDINA
ISAIS TORRES
La Raza Legal Alliance
2990 Richmond, Suite 205
Houston, Texas 77908
713/524-4801

Attorneys for Amicus Curiae

**Attorney of Record*
for Amicus Curiae

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Amicus curiae, pursuant to Rule 36, Rules of the Supreme Court of the United States, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on March 10, 1981. [The Court of Appeals] decision is reported as *De Avila v. Civiletti*, 643 F.2d 471 (7th Cir. 1981.] A timely petition for rehearing and suggestion for rehearing *en banc* was denied on June 8, 1981, three judges dissenting.

I.
INTEREST OF AMICUS CURIAE[1]

The National Center for Immigrants' Rights is a non-profit organization receiving funding from governmental and non-governmental sources for the purpose of serving as a national resource center on legal issues involving immigrants and refugees.

The Center has served as counsel in a number of class action cases involving the Constitutional and statutory

[1]Pursuant to Rule 36.5, *amicus curiae* shall only set forth the interest of *amicus curiae*, a summary of the argument, argument, and the conclusion.

rights of non-citizens residing in the United States. The Center has served as counsel on immigration-related issues to hundreds of not-for-profit organizations throughout the United States, including the National Council of Churches, Church World Services, Texas Farm Workers' Union, Arizona Farm Workers' Union, the Chicano Federation, United California Mexican American Association and others. The Center also from time to time provides direct representation at no cost to indigent persons. Both members of the organizations and associations represented by the Center, as well as individual clients of the Center, will be directly and immediately affected by the outcome of this case.

The interests of additional amicus curiae applicants represented by N.C.I.R. have been discussed in the attached motion for leave to file brief amicus curiae.

II.
SUMMARY OF ARGUMENT

1. Importance of the Question:

Perhaps more than anything else, this case involves matters of marriage and family life -- whether thousands of fathers, mothers, husbands, wives and children, largely eligible for immigrant status, will be allowed to remain with their families while the government processes their immigrant visas. The institution of the family is deeply rooted in this Nation's history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural.

Almost all of the non-citizen petitioners in this case will eventually be granted lawful resident status. However, this process may take a number of months or years. The United States citizen and lawful immigrant petitioners argue that a federal agency has unlawfully delayed the processing of their immigrant visas by failing to appropriate congressionally mandated visas to Western Hemisphere immigrants during fiscal 1977. Each withheld visa represents a lost or substantially deferred opportunity to obtain lawful resident status. Disposition of this case will decide whether thousands of visas were illegally withheld by the Government, and whether petitioning families must be shattered or may remain united pending the processing of the visas at issue in the litigation.

For thousands of families deportation of one or both of the parents will result in the *de facto* deportation of minor U.S. citizen children, the need for remaining family members to seek public assistance upon expulsion of a breadwinner, and psychological and emotional harm suffered by children left behind. Due to existing "exclusion" laws, petitioners and class members experiencing deportation will also have great difficulty reuniting with their nuclear families in the future through a lawful immigration process.

This case also involves important questions concerning the statutory rights of U.S. citizens and lawful permanent residents to reunite their families through the immigration process. Specifically, whether having established statutory eligibility based on the existance of a family relationship, the U.S. citizen and lawful resident applicants have a vested right to the *processing* (as opposed to the granting) of their relative's immigrant visa.

Finally, this case involves important questions of statutory construction which could affect thousands of families in their reunification efforts under our immigration laws.

2. Review of Legislative History and Relevant Statutory Language:

This case involves the Government's failure to process and allocate approximately 13,000 visas authorized by Congress under the 1976 Amendments to the Immigration and Nationality Act ("1976 Amendments"), Pub.L. 94-571, 90 Stat. 2703, to Mexican visa applicants during the fiscal year 1977. The 1976 Amendments applied a "fiscal year" 20,000 per country visa limitation on the Western Hemisphere. 8 U.S.C. § 1152(a)(1976). The amendments became effective on January 1, 1977, after one-quarter of fiscal year 1977 had elapsed. 8 U.S.C. §1101 note. Visas issued to Western Hemisphere immigrants in the first quarter of fiscal year 1977, from October 1, 1976, to December 31, 1976, were allocated pursuant to Section 2l(e) of the 1965 Amendments to the Immigration and Nationality Act ("1965 Amendments"), Pub.L. 89-236, 79 Stat. 911, 921, 8 U.S.C. § 1101(a)(27), rather than under the "preference system" which took effect on January 1, 1977. 8 U.S.C. § 1153(a)(1976). The Court of Appeal incorrectly held that the Department of State properly deducted visas issued in the first quarter of fiscal year 1977 from the 20,000 limitation which only became effective on January 1,

1977.

First, the Court of Appeals incorrectly rejected a "literal interpretation" of relevant portions of the 1976 Amendments. 643 F.2d at 477. A "literal" interpretation of the 1976 Amendments is supported by legislative history, creates no internal contradictions in the amendments, and was followed by the implementing agency as to all provisions of the amendments *except* the starting date for application of the 20,000 limitation.

Second, statutes are to be construed prospectively unless the legislative intent that they be given retroactive operation clearly appears from the express language of the act. In this case, Congress clearly intended the 1976 amendments to the Immigration Act to apply as of January 1, 1977. The agency applied all provisions of the 1976 amendments prospectively except the single provision at issue here. While the 1976 amendments provided various new benefits for Western Hemisphere immigrants in "any fiscal year", the agency only made these benefits available on and after January 1, 1977, the effective date of the legislation. Nevertheless, the agency applied a new 20,000 per country visa limitation in "any fiscal year" retroactive to October 1, 1976. This provision should have been construed prospectively as were the other major provisions of the 1976 amendments.

Third, the language and history of the 1976 amendments indicate that the entire enactment was meant to apply prospectively. While the primary thrust of Congressional concern lay with reducing existing visa backlogs and expediting the family reunification process, implementation of the Court of Appeal's interpretation will directly precipitate additional backlogs, mass deportations and family separations. The Court of Appeal's interpretation further should be questioned in light of the 1976 amendments inclusion of a "savings clause" which preserved entitlement to immigrant status eligibility established prior to the effective date of the legislation.

3. Vested Rights Theory:

The Court of Appeals concluded that "[v]isa applicants have no vested right in the issuance of a visa." *Ibid.* However, the U.S. citizen and lawful permanent resident petitioners, who are *statutorily* entitled to immigrate qualified close relatives, 8 U.S.C. §§ 1101(a)(27) and 1153(a)(1970), do have vested rights upon the approval of their petitions by the

agency.

By definition all petitioners involved in this action had been granted "priority dates" by the agency before enactment of the 1976 amendments. 643 F.2d 472, n.5 and 474. Under the agency's regulations, establishment of a "priority date" requires a showing and finding of entitlement to immigrant preference status on the basis of a family relationship. 22 C.F.R. § 42.1, 42.63, 42.64. A retrospective application should not be given to a statute which interferes with antecedent rights unless such be the unequivocal and inflexible import of its terms.

III.

ARGUMENT

1. Importance Of This Case On Family Reunification And Access To Lawful Immigrant Status

At the heart of this case lie two questions. First, are the petitioners entitled to lawful immigrant status at the present time or only at some distant point in the future? That is, has the State Department illegally withheld the issuance of thousands of visas? And, second, will the petitioning families remain united during the period in which the immigrant visas at issue are processed?

At the outset, it is important to underscore the limited scope of judicial inquiry into immigration legislation. *Fiallo v. Bell*, 430 U.S. 787, 792, 97 S.Ct. 1473 (1977). While there may be no area of law in which Congress has more unreviewable power than in immigration and naturalization matters, by contrast the power of an agency's interpretation and implementation of the Immigration & Nationality Act is more circumscribed. For example, the Immigration Service must conform its actions to the statutes passed by Congress and the international agreements joined by the United States. *See, generally,* Gordon & Rosenfield, 2 *Immigration Law & Procedure,* §§ 8.12(a), 8.15(a) and 8.17(b) (1980) hereinafter "*Gordon & Rosenfield.*" This case does not involve a challenge to Congressional action in the immigration field. Instead it solely concerns an agency's interpretation of an amendment to the Immigration Act. The broad deference shown to Congressional enactments is therefore to be limited in evaluating the issues raised in this case. *Ibid.*

a. Importance of the status of lawful permanent resident

The documentable petitioners in this case who seek lawful resident status currently live a precarious life in this country. Without the legal protections that come with lawful permanent residence, they essentially remain an "underground class. . ., unhealthy for society as a whole and contribut[ing] to ethnic tensions." *U.S. Immigration Policy & the National Interest*, Final Report and Recommendations of the Select Commission on Immigration & Refugee Policy to the Congress and the President of the United States, March 1, 1981, hereinafter "Select Commission" at 11. These documentable migrants are "exploitable at the workplace," *Id.* at 13, often lack access to "public hospital services", *Id.*, at 39, and generally "will not avail themselves of the protection of U.S. laws." *Id.* at 42.

With the granting of lawful permanent resident status, the immigrant secures the vital protections provided by the twin safeguards of due process and equal protection against arbitrary federal or state action. *Graham v. Richardson*, 403 U.S. 365, 91 S.Ct. 1848 (1971) *Yick Wo v. Hopkins*, 118 U.S. 356, 6 S.Ct. 1064 (1886); note, *Protection of Aliens' Rights Under the Fourteenth Amendment*, 1971 Duke Law Journal 583. They clearly reinforce their rights under the Civil Rights Act which prohibits discrimination against immigrants in the exercise of their constitutional rights, privileges and immunities, and assures them security of their persons and property. 42 U.S.C. §§ 1981, 1983; 18 U.S.C. § 242. The lawful permanent resident can engage in any employment or activities permitted by law. The permanent resident immigrant also qualifies for many important governmental benefit programs unavailable to non-immigrants and undocumented immigrants. *See, e.g., Nyquist v. Mauclet*, 432 U.S. l, 97 S.Ct. 2120 (1977) (unconstitutional to limit student financial aid to U.S. citizens, excluding lawful permanent residents). Finally, the lawful permanent resident immediately begins to satisfy the residency requirement which is a condition leading to eligibility for naturalization. *Schwab v. Coleman*, 145 F.2d 672 (4th Cir. 1944).

b. Liabilities associated with deportation from the United States

Implementation of the Court of Appeals' decision in this case

will lead to the deportation of thousands of *documentable* migrants; that is, persons who qualify for lawful immigrant status. While from a technical viewpoint a deportation edict does not involve a criminal punishment, expulsion in the petitioners' cases nevertheless will involve separation from home and family and deprivation "of all that makes life worth living." *Ng Fung Ho v. White*, 259 U.S. 276, 284, 42 S.Ct. 492 (1922).

Generally, expulsion is a protective measure to rid the United States of immigrants deemed undesirable. 8 U.S.C. § 1251. The force of this national interest is weakened when the immigrant has a family legally residing here, has established roots in this country, and is ultimately documentable under existing provisions of the Immigration Act. In short, at least for the petitioners in this case who are all long-term residents of this country and have close family ties here, the consequences of deportation can be far more devastating than criminal punishment. This Court has recognized that deportation is a "drastic measure", *Tan v. Phelan*, 333 U.S. 6, 10, 68 S.Ct. 374 (1948), one "which can destroy lives and disrupt families." *Gastelum Quinones v. Kennedy*, 374 U.S. 469, 479, 83 S.Ct. 1819 (1963).

Clearly the deportation proceeding will often have serious collateral consequences on persons not named as respondents in such proceedings, e.g. family members whose livelihood and/or immigration status depends on that of the respondent. In many situations U.S. citizen family members suffer "the gravest consequences . . . [with] the disruption of the family unit." *The Tarnished Golden Door*, A Report of the United States Commission on Civil Rights, September 1980, hereinafter "*Golden Door*" at 97.

While the Immigration Act provides for a due process deportation hearing prior to involuntary removal from the United States, 8 U.S.C. § 1252, the vast majority (more than 90%) of persons forced to leave the United States never appear before an impartial administrative law judge for a determination of the existence of equities which may prevent deportation. *Golden Door, supra*, at 105. After an extensive on-site investigation, the U.S. Civil Rights Commission was forced to conclude that Immigration Service agents engage in a common practice of making "offers of voluntary departure *coupled with warnings about the risks of [due process] deportation hearings.*" *Id.*, at 109 (emphasis added).

And, "the Service's practice of urging people to accept voluntary departure. . . might well deny [them] their constitutional right to a hearing before deportation from the United States." *Id.*, at 110.

Having been removed from the United States, many of the petitioners and class members will experience new legal obstacles in their future immigration efforts. Persons against whom an expulsion order has been executed pursuant to law, or who have been removed from the United States at government expense, are perpetually barred from reentry unless in each instance the Attorney General consents to their reapplying for admission to the United States. 8 U.S.C. § 1182(a)(16) and (17). The statute requires similar consent to reapply when the person has been removed from the United States pursuant to a grant of voluntary departure at government expense. *Ibid.; see, generally, Gordon & Rosenfield, supra,* Vol. 1, § 2.33 and Vol. 2 § 7.2a. Future entry into the United States without the advance permission of the Attorney General is a felony. 8 U.S.C. § 1326.

The extreme hardship which petitioners and class members will face upon implementation of the Court of Appeals decision in this case strongly mitigates in favor of this Court granting the petition for a writ of certiorari.

c. Outcome of this case on family reunification

Among other things, the unity and cohesiveness of thousands of families depend on the outcome of this case.

This case involves more than extended families — it involves the possible dislocation of *nuclear* families. The social, psychological and cultural importance of maintaining the nuclear family cannot be overstated. *See* Murdock *The Universality of the Nuclear Family*, in *A Modern Introduction to the Family*, 37, 43 (N. Bell & E. Vogel eds. rev. ed. (1968). The Court has "frequently emphasized the importance of the family." *Stanley v. Illinois*, 405 U.S. 645, 31 L.Ed. 2d 551, 92 S.Ct. 1208 (1972). The marriage bond has been termed one of the "basic civil rights of man. . ." *Skinner v. Oklahoma*, 316 U.S. 535, 541, 62 S.Ct. 1110 (1942). This Court has stated that the family "remains not merely still a pervasive living pattern, but under the goad of brutal economic necessity a prominent pattern -- virtually a means of survival -- for large numbers of poor and deprived minorities of our society." *Moore v. City of East Cleveland*, 431 U.S. 494, 52 L.Ed.2d

521, 97 S.Ct. 1932 (1977).

Likewise, as discussed in more detail *infra*, the Immigration & Nationality Act has as one of its fundamental purposes "the preservation of the family unit" H.R.Rep. 1365, 82d Cong., 2d Sess., 29 (1952), U.S. Code Cong. and Admin. News 1952, pp. 1653, 1680, and the keeping families of United States citizens and immigrants united." H.R. Rep. No. 1199, 85th Cong., 1st Sess., 7 (1957), U.S. Code Cong. and Admin. News 1957, pp. 2020.

The historical importance placed on maintaining the integrity of the nuclear family by this nation and Court provides a substantial ground for granting the writ of certiorari. This case does not merely raise an interesting legal question; it presents questions whose resolution will have profound importance far beyond the particular facts and named parties involved. In reality, this case involves the "plans, hopes and aspirations of a great many people throughout the country." Address of Chief Justice Vinson before the American Bar Association, Sept. 7, 1949, 69 S.Ct. v, vi.

2. The Court of Appeal Incorrectly Interpretated The Congressional Intent

Had Congress intended retroactive application of the 20,000 per country limitation in the 1976 Amendments, words were there to be used.[3] Instead, the clear meaning of the amending language, whether providing new benefits to intending immigrants or placing on them new restrictions, indicates that the amendments were to be applied prospectively beginning on January 1, 1977. Neither the language of the amendments nor the relevant legislative history supports a retroactive application of the per country 20,000 visa limitation.

a. Statutory language which could lead to involuntary expulsions and denials of important benefits must be narrowly drawn

In general our courts have become increasingly sensitive to

[3]For example, the Refugee Act of 1980, Pub. L. 96-212, March 17, 1980, 94 Stat. 109, limits the number of refugees who may enter the United States during the fiscal year and specifically addresses the question of how many could enter during "fiscal year 1980..." *Id.*, Section 207(a)(i); 8 U.S.C. § 1157(a)(1).

the hardships persons face with deportation. *See, generally, Gordon & Rosenfield, supra,* Vol. 1A, § 4.1c(1). This sensitivity has led to the strict interpretation of statutes which may result in involuntary expulsions. *Barber v. Gonzalez,* 347 U.S. 637, 643, 74 S.Ct. 822 (1954); *Bonetti v. Rogers,* 356 U.S. 691, 78 S.Ct. 976 (1958); *Tan v. Phelan,* 333 U.S. 6, 10, 68 S.Ct. 374 (1948). As the leading treatise in immigration law concludes, statutes which may lead to deportation "must be strictly construed, and must be limited to the narrowest compass reasonably extracted from their language." *Gordon & Rosenfield, supra,* Vol. 1A, § 4.1(2). It has also been held that doubts concerning legislative intent should be resolved in favor of the immigrant when statutes which may lead to deportation are involved. *See, e.g., INS v. Errico,* 385 U.S. 214, 87 S.Ct. 473 (1966); *Lok v. INS,* 548 F.2d 37, 39 (2d Cir. 1977) ("settled doctrine, that deportation statutes, if ambiguous, must be construed in favor of the alien."); *McLeod v. Peterson,* 283 F.2d 180 (3rd Cir. 1960).

While the 20,000 per country quota imposed by the 1976 amendments is not strictly speaking a deportation law, its interpretation will either lead to the granting of lawful status or the deportation of thousands of persons. Nothing in the legislative history of the 1976 amendments indicates a Congressional desire to achieve the latter result. On the contrary, the "primary purpose" of these amendments was to establish "an orderly system of immigration for natives of the Western Hemisphere" and to reduce the "unfortunate situation" of "delay[s] in receiving their visas." *Congressional Record,* H.R. 14535, 94th Cong., 2d Sess., 122 Cong. Rec. No. 149, Part II (Sept. 29, 1976) (remarks of Rep. Eilberg).

The Court of Appeals rejected adoption of a "literal interpretation of the 1976 amendments. . ." 643 F.2d at 477. However, the authorities cited above indicate that the deportation consequences involved here suggest a strict and literal interpretation of the pertinent amendments. Section 10 of the 1976 amendments, 90 Stat. 2707, clearly states that the amendments "shall become effective on the first day of the first month which begins more than sixty days after the date of enactment of the Act." The 1976 amendments were enacted on October 20, 1976, and therefore became effective on January 1, 1977. Every provision of these amendments, other than the 20,000 per country limitation, was implemented on or after January 1, 1977. A strict interpretation of the 20,000

per country limitation, and one which resolves ambiguity "in favor of the alien", would make this provision effective on January 1, 1977 and would not require that visas issued before that date be charged against the 20,000 restriction.[3]

b. Statutes are to be construed prospectively unless legislative intent shows retroactive application was intended

As stated by the Court of Appeal, nothing in the 1976 legislation directly authorized retroactive application of the 20,000 per country quota limitations. 643 F.2d at 476. Statutes are to be construed prospectively unless the legislative intent that they be given retroactive operation clearly appears from the express language of the act. *See, e.g., Winfree v. N. Pacific R.R. Co.*, 227 U.S. 296 (1973). This Court has stated that "a statute shall not be given retroactive effect, unless such a construction is required by explicit language or by necessary implication..." *U.S. v. St. Louis R.R.*, 207 U.S. 1, 46 S.Ct. 182, 183 (1926). And, "[r]etroactivity even where permissible is not favored, except upon the clearest mandate." *Calridge Apts. Co. v. Commissioner of I.R.S.*, 323 U.S. 141, 65 S.Ct. 172, 185 (1944).

Nothing in the language of the 1976 amendments or the legislative history "mandate[s]" retroactive application of the 20,000 limitation. Interestingly enough, this entire dispute arises because the 20,000 limitation was to be applied "in any fiscal year." 8 U.S.C. § 1152(a)(1976). However, other provisions of the 1976 amendments were also to be applied "in any fiscal year." For example, Western Hemisphere immigrants were formerly governed by different procedures. 643 F.2d at 473. The 1976 amendments for the first time made the immigration "preference system", 8 U.S.C. § 1153 (a), applicable to Western Hemisphere immigrants. That statute

[3]The agency itself applied a strict and literal interpretation of the 1976 amendments with regards the *qualitative* system under which visas were issued between October 20, 1976 and December 31, 1976. The agency advised its officers and agents that the "existing provisions of the INA [Immigration Act] and visa regulations remain in full force and effect until midnight December 31, 1976." Department of State, Unclassified Telegram, No. 308525, "To All Diplomatic and Consular Posts," dated December 16, 1976. All provisions of the 1976 amendments which provided benefits to immigrants were implemented on and after January 1, 1977.

refers to how visas are to be divided in "any fiscal year. . ." 8 U.S.C. § 1153(e). However, the agency in practice and in legal arguments in litigation, *see Rubio de Cachu v. I.N.S.*, 568 F.2d 625 (9th Cir. 1977), held to the position that Western Hemisphere immigrants were not eligible to apply for "preference" status under 8 U.S.C. § 1153(a) until January 1, 1977. Likewise the availability of "adjustment of status", 8 U.S.C. § 1255 (1976), only became available to Western Hemisphere immigrants on January 1, 1977. These applicants are also charged to quotas "for the fiscal year. . ." 8 U.S.C. § 1255(b)(1976).

Nothing in the 1976 amendments or their legislative history reflects a clear "mandate" to apply the 20,000 per country visa limitation retroactive to October 1, 1976. Retroactive application in this instance should be rejected.

c. The language and legislative history of the 1976 amendments indicate that the entire enactment was meant to apply prospectively

The Court of Appeals' interpretation of the 1976 amendments quite clearly adds significantly to the visa backlogs for Mexico. Other Western Hemisphere countries are without similar backlogs. The Court of Appeals' interpretation runs counter to the intent of the author of the amendments which was, *inter alia*, to eliminate the "unnecessary hardships for potential Western hemisphere immigrants. . . [now] experiencing a 29 month delay in receiving visas." *Congressional Record*, H.R. 14535, 94th Cong., 2d Sess., 122 Cong., No. 149, Part II (Sept. 29, 1976) (remarks of Rep. Eilberg).

The existing Western Hemisphere "backlogs" in 1976, particularly experienced by Mexican nationals, caused "considerable hardship for intending immigrants" and it was "the express purpose of [the 1976 amendments] to correct this situation." H.R. Rep. No. 94-1553, 94th Cong., 2d Sess., 4, *reprinted* in [1976] *U.S. Code Cong. and Ad. News*, 6073, 6076.[4] The legislative history further provides that the amendments were meant to address the "considerable difficulty" being faced by intending immigrants "in being

[4]No Senate Report was submitted with this legislation. The bill was passed in the Senate by "unanimous consent" without debate or discussion on October 1, 1976. *Congressional Record*, 94th Cong., 2d Sess., 122, No. 151, 17692.

reunited with members of their family who are U.S. citizens or permanent resident aliens." *Id.* at 6078.

Further evidence of the legislative intent appears from the language of the 1976 amendments. Section 2 of the amendments provides that visas "made available. . . under paragraph (1) through (7) of section 1153(a) of this title shall not exceed 20,000 in any fiscal year." 8 U.S.C. § 1153(a)(1976). However, *no* visas were made available to Western Hemisphere immigrants "under paragraph (1) through (7) of section 1153(a)" until January 1, 1977. 643 F.2d at 475; 1976 *U.S.Code Cong. and Ad. News, supra*, 6088. The plain language of the amendments make clear that the new 20,000 visa limitation was intended to become effective simultaneously with the issuance of visas under paragraph (1) through (7) of section 1153(a) to Western Hemisphere immigrants.

Finally, the interpretation offered by *amici* is supported by the inclusion of a "saving clause" in the amendments which specifically preserved entitlement to immigrant status established prior to the effective date of the legislation. Section 9, Amendments of 1976, Pub.L. 94-571, 90 Stat. 2707, 8 U.S.C. § 1153(a)(note). To the extent that potential immigrants who had already established eligibility "under statutory or regulatory provisions in existence on [or before December 31, 1976]", *Ibid.*, also qualified for a "preference" status after the amendments became effective, they were entitled in 1977 to obtain "a preference status [under] Section 203(a). . .deemed to have been filed as of the priority date previously established by such alien." *Ibid.* And, importantly, the "*numerical limitation to which such an alien shall be chargeable shall be determined as provided in sections 201 and 202 of the Immigration & Nationality Act, as amended by this Act.*" *Ibid.* (Emphasis added.) The 20,000 per country limitation was introduced in Section 202 Act, as amended. Congress had clearly provided that only "such" aliens who sought eligibility under the new "preference" system, which went into effect on January 1, 1977, should be "chargeable" to the 20,000 "numerical limitation" in section 202.

3. U.S. Citizen And Lawful Permanent Resident Petitioners Had Vested Rights To The Processing Of Visa Applications Under Existing Law in 1976

The Court of Appeals concluded that "[v]isa applicants

have no vested right to the issuance of a visa." 643 F.2d at 477. *Amici* believe that both the potential immigrants and the U.S. citizen and lawful resident petitioners who have statutory rights to immigrate their close relatives possess rights which vest upon establishment of entitlement based on the family relationship. 22 C.F.R. §§ 42.1, 42.62, 42.63.

This Court said in *Union Pacific Railway Co. v. Laramie Stockyards Co.*, 231 U.S. 190 (1913), that a retrospective application will not be given to a statute which interferes with antecedent rights "unless such be 'the unequivocal and inflexible import of its terms'. . ." *Id.*, at 199. As again stated in *Greene v. United States*, 376 U.S. 149, 84 S.Ct. 615 (1964):

> [L]egislation must be considered as addressed to the future, not to the past. . . and a retrospective operation will not be given to a statute which interferes with antecedent rights. . . unless such be "the unequivocal and inflexible import of the terms, and the manifest intention of the legislature."

Id., 376 U.S. at 159-60, 84 S.Ct. at 621-22.

The view that the rights at issue in *Greene* had matured hinged on the Court's belief that the affected rights were substantive in nature. However, in *De La Rama Steamship Co. v. United States*, 344 U.S. 386, 73 S.Ct. 381 (1953), the petitioner asserted its claim in district court and, on appeal, the government argued that petitioner had chosen the wrong forum because of a statute enacted after the suit was filed transferring jurisdiction to the Court of Claims. Despite the seeming procedural nature of the statutory modification, this Court disagreed with the government because the statute responsible for the change in forum *also* resulted in a substantial dimunition of the monetary amount available for recovery. 344 U.S. at 390. In essence,

> the problem in regard to retroactive laws is to determine under what circumstances, for what purposes, with what extent, unfairness results from the time frame within which a statute exerts its influence.

2 Sands, *Sutherland Statutory Construction*, § 49.02 (4th ed. 1975).

Given the importance of the rights at stake here, and the

pre-existing establishment of entitlement to the processing of immigrant visas, the 20,000 per country visa limitation in the 1976 amendments should be read to become effective on January 1, 1977 and applied only to visas issued on and after that date.

IV.

CONCLUSION

Amicus curiae have shown the importance of this case and the possible errors in the reasoning adopted by the Court of Appeals. We urge that the writ of certiorari requested by petitioners be issued.

Respectfully submitted,

PETER A. SCHEY *
TIMOTHY S. BARKER
CARLOS HOLGUIN
National Center for
Immigrants' Rights
1550 West Eighth Street
Los Angeles, CA 90017
(213) 487-2531

AMIT PANDYA
National Center for
Immigrants' Rights
1511 K Street N.W., Suite 931
Washington, D.C. 20005
(202) 737-1444

VILMA S. MARTINEZ
MORRIS J. BALLER
JOHN E. HUERTA
Mexican-American legal
Defense & Educational Fund
1636 West Eighth Street
Suite 319
Los Angeles, CA 90017
(213) 383-6952

JOSE MEDINA
ISAIAS TORRES
La Raza Legal Alliance
2990 Richmond, Suite 205
Houston, Texas 77908
(713) 524-4801

PETER A. SCHEY
Attorney of Record
for *Amicus Curiae*

Attorneys for *Amicus Curiae*
DATE: July 23, 1981

Certificate of Service

I, Peter A. Schey, Attorney of Record for *Amicus Curiae*, do hereby certify that true and correct copies of the foregoing have been served upon all parties by placing same in the United States mail, certified, return receipt requested, addressed to

LAWRENCE G. WALLACE
Acting Solicitor General
Department of Justice
Washington, D.C. 20530

BRUCE L. GOLDSMITH
ROBERT E. LEHRER
KRISTINE POPLAWSKI
Legal Assistance Foundation of Chicago
343 South Dearborn Street
Chicago, Illinois 60604

KALMAN RESNICK
Jacobs, Burns, Sugarman & Orlove
201 N. Wells Street, Suite 1900
Chicago, Illinois 60606

RANDALL SCHMIDT
Mandel Legal Aid Clinic
6020 S. University Avenue
Chicago, Illinois 60637

JOEL SPRAYREGEN
Aaron, Schimber, Hess,, Rusnak,
Deutsch & Gilbert
55 West Monroe Street
Chicago, Illinois 60603

PETER A. SCHEY
Attorney for *Amicus Curiae*